**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVISION APPLICATION NO. 19 OF 2004**

Shri Ramkrishna Anand Raikar,
Residing at House No.325,
Porsem Bhat, St. Caitan Ward,
Merces, Ilhas-Goa. ... Applicant

versus

1. State,
   through the Public Prosecutor
   Panaji-Goa.

2. Shri Bismark C. D'Souza,
   Flat No.3, Block A,
   Mark Residency, Merces,
   Ilhas – Goa. .. . Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Rohit Bras De Sa, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No. 1.

Mr. A. Monteiro, Advocate for Respondent No. 2.

**CORAM:** N. A. BRITTO, J.

**DATE** : 1ST OCTOBER,2004,
7TH OCTOBER,2004 &
8TH OCTOBER, 2004.

**ORAL ORDER**

This revision is directed against the Judgment/Order dated 21st August, 2004 of the learned Sessions Judge, Panaji, in Criminal Revision Application No.42 of 2004.

2. Some facts are required to be stated to dispose off the present revision.

3. The Applicant herein(Applicant, for short) and his mother were the owners of a property surveyed under No. 16/3 of Village Murdda, Merces. The Applicant had entered into an agreement with the Respondent No.2(Respondent, for short) on or about 3rd August, 1995 regarding the development of the said property.

4. Disputes and differences arose between the said Applicant and the said Respondent in connection with the development of the said property as a result of which the Respondent filed two suits. Civil Suit No.138/03/A was filed in connection with revocation of Power of Attorney dated 13th June, 2002, on or about 4th December, 2003 and Civil Suit No.45/04/B was filed in relation to a Partition Deed entered between the Applicant and his mother. However, the filing of the said suits are not of relevance for the purpose of deciding the present revision.

5. The dispute which was the subject matter of the proceedings before the learned SDM was flat no.G-3 situated on the ground floor in Block 'A'.

6. The case of the Applicant was that the Respondent had handed over to the Applicant 5 flats including the said flat no. G-3 on

the ground floor and this fact was confirmed by the Respondent by his letter dated 12th June, 2002.

7. The Applicant claimed that he was in physical and legal possession of the same and was dispossessed on or about 28th January, 2004 and regarding which incident he filed a complaint to the Police. The Applicant, thereafter, filed an application dated 3rd May, 2004, to the learned SDM purporting it to be an application filed under Section 145 of the Code of Criminal Procedure, 1973(Code, for short) stating that by virtue of agreement dated 3rd August, 1995, the Respondent was allowed to develop the said property and that in terms of the said agreement, the Respondent had handed over to him possession of 5 flats bearing flat nos.2, 3 and 6 in Block 'A' and flat nos.1 and 4 in Block 'B' on or about 12th June, 2002, and that subsequently, by letter dated 12th June, 2002, the said possession was confirmed. The Applicant further stated that he had sold flat no.6 to one Santosh G. Bharemane and flat nos.1 to 4 were given to Gajanan Pangam on licence basis. The Applicant had further stated that the Respondent had provided electricity connection to the said 5 flats before possession was given to the Applicant by providing one meter for all the 6 flats but when the Electricity Department found the same, the supply was disconnected on 16th November, 2003, in respect of 4 flats as all the 4 flats had one meter and it was brought to his notice that all independent flats had to have separate electricity meters. The Applicant stated that upon a Writ Petition filed by him

bearing No.625 of 2003, the Electricity Department was directed to restore the electricity supply to the Applicant.

8. As already stated, on or about 2nd May, 2004, the Applicant filed a written complaint which was registered under CR. No.51/2004 under Sections 448, 427 r/w 34 I.P.C. though, there is no mention to this complaint of the Applicant in his application made to the learned SDM. However, the Applicant did allege that the Police Inspector was delaying the investigation because the Respondent was the brother of another Police Inspector. The Applicant also stated that on the intervention of the Superintendent of Police, the Applicant was directed to break open the lock on 28th April, 2004 and had found a list of goods missing. The Applicant, therefore, inter alia, prayed that the Respondent be directed to restore the possession of the said flat no.G-3, Block 'A' to the Applicant.

9. The learned SDM referred the said complaint of the Applicant to the Police for enquiry and report and the Police Inspector submitted his report on 5th May, 2004. In the said report, the Police Inspector, inter alia, stated that the Applicant on 28th April, 2004, had complained that the Respondent had trespassed into the flat no.G-3 of Block 'A' through the rear window and had dispossessed the Applicant regarding which Cr.No.12/04 was registered. The said Police Inspector also reported that from the

statements recorded, it was disclosed that the said flat belonged to the Applicant and was being occupied by him. The said report also indicated that on 27th April, 2004, the Applicant had entered into the said flat by breaking open the lock and that the Respondent again trespassed into the said flat on 1st May, 2004, by breaking open the lock of the main door and started living there illegally regarding which the Applicant had submitted a complaint which was registered as Cr. No.51/04. The Police Inspector conducted a panchanama on 4th May, 2004, and found that the Respondent was residing in the flat along with his wife. The Police Inspector also reported that there was every possibility that the Applicant will try to dispossess the Respondent who was residing illegally and which may create serious breach of peace in the said Mark Residency.

10. The learned SDM after perusal of the said report submitted by the Police Inspector on 5th May, 2004, passed an Order which reads as follows:-

> "Upon perusal of the Police Report I am satisfied that there is a dispute on an immovable property giving rise to breach of peace. Issue notice to both the parties fixing the matter for hearing as provided under Section 145 Cr.P.C. for argument/order on 7-5-2004 at 10.00 a.m. Notice to be served through P.I. Old Goa".

11. In response to the said notice, the Respondent filed a preliminary reply and took several preliminary objections including that no allegations or grounds were made out to proceed under Section 145 of the Code and that the parties were already before the Civil Court in Regular Civil Suit No.57/04/C for an injunction in respect of the same flat. This suit was admittedly filed on 5th May, 2004. However, the learned SDM on 7th May, 2004, upon hearing the Applicant as well as the Respondent found that both the parties were claiming a right to the said flat G-3 and that the point for his determination was to decide as to who was entitled to possess the said flat G-3. The learned SDM stated that the question before him was whether the party no.1 was in possession and was dispossessed by the Respondent within the preceding two months and in order to determine the said issue, the Applicant had to lead oral evidence and, therefore, proceeded to fix the case for evidence of the Applicant/party no.1 on 11th May, 2004, on which date, the case was adjourned and subsequently on the adjourned date i.e. on 21st May, 2004, the evidence of the Applicant was partly recorded and that of another witness was also partly recorded. A controversy appears to have cropped up between the parties when the learned SDM granted permission to cross-examine the said witness.

12. As a result, the Respondent filed a Revision Application being Criminal Revision Application No.42/2004 before the Sessions Court, Panaji.

13. The learned Sessions Judge, allowed the Respondent's revision essentially on two grounds. The learned Sessions Judge found that the learned SDM had recorded his satisfaction about the breach of peace in his preliminary order issued under Section 145 of the Code without there being any averments in that regard in the application of the Applicant dated 4th May, 2004, and without setting out the grounds for his satisfaction in the said preliminary order. The learned Sessions Judge also found that the subject matter of the Regular Civil Suit No.57/04/C was also the same flat no.G-3 which was subject matter of the proceedings before the learned SDM. The learned Sessions Judge found that the said Regular Civil Suit No.57/04/C was filed by the Respondent seeking a declaration that he was entitled to remain in possession of the said flat and for permanent injunction and considering the said reliefs, the matter of possession whether it was lawful or illegal was required to be adjudicated by a Civil Court before whom the said Regular Civil Suit No.57/04/C was filed and in view of the undertaking given by the Applicant the apprehension of breach of peace no longer subsisted and since the dispute was already pending before the learned Civil Court where the issue of possession was being adjudicated, it was not necessary to continue parallel proceedings under Section 145 of the Code and, therefore, the learned Sessions Judge proceeded to drop or close the said proceedings.

14. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant has submitted that the Civil Suit was not pending on the date of preliminary order which was made by the learned SDM and the said suit was also not at the instance of the Applicant but on the contrary was at the instance of the Respondent in which suit the Applicant was not to get any relief. Mr. Lotlikar, learned Senior Counsel has next submitted that the Police Report spelt out that there was a case of breach of peace and what was in fact required was that breach of peace should have existed at the time of making the preliminary order and not subsequent to it. Mr. Lotlikar, has submitted that the reliance placed by the learned Sessions Judge on the case of **Ram Sumer Puri Mahant** v. **State of U.P. and others** (AIR 1985 SC 472) is wholly misplaced because there was no Civil Suit pending at the time when the preliminary order was issued by the learned SDM. It is also the submission of Mr. Lotlikar, that there was no challenge in the revision petition to the preliminary order issued by the learned SDM.

15. On the other hand, Mr. A. Monteiro, learned Counsel of the Respondent No.2 has submitted that the suit was filed on 5th May, 2004, and a notice was served on the Applicant to appear on 6th May, 2004, while the appearance before the learned SDM was scheduled on 7th May, 2004. Mr. Monteiro, learned Counsel submits that on 10th May, 2004, the Applicant along with other Defendants in the said Civil Suit gave an undertaking that they would not interfere with the

suit flat without prejudice to their rights in criminal proceedings pending before the District Magistrate. Mr. Monteiro, has further submitted that in the light of the said undertaking, the learned Civil Judge, Junior Division, did not pass any order directing the said Applicant and other Defendants not to interfere with the possession of the Respondent/Plaintiff.

16. The first controversy which I would like to consider is whether the learned Sessions Judge was justified in ordering the dropping or closure of the proceedings initiated by the learned SDM. In fact, Mr. Lotlikar, learned Senior Counsel of the Applicant has submitted that there was no challenge at all to the preliminary order of the learned SDM in the revision petition filed before the Sessions Court and the exercise of powers of revision being discretionary in nature, the learned Sessions Judge ought not to have exercised the same, suo motu.

17. As rightly pointed out by Mr. Lotlikar, learned Senior Counsel and as can be seen from the revision memo filed by the Respondent before the learned Sessions Judge as well as the first para of the impugned Order of the learned Sessions Judge, it appears that there was no challenge to the preliminary order of the learned SDM dated 5th May, 2004. It also appears that both the parties had advanced arguments for and against the said preliminary order under Section 145(1) of the Code. That apart the learned Sessions Judge

was always free to invoke her suo motu powers of revision. The learned Sessions Judge placed reliance on two Judgments of this Court. The learned Sessions Judge also referred to the case of **Brij Lal Chakoo** v. **Abdul A. Nishati and others**(1980 Cri.L.J. 89) wherein it was observed that the foundation upon which the jurisdiction of the Magistrate to proceed with under Section 145 of the Code was based on the satisfaction of the Magistrate that there was a dispute relating to possession of immovable property and that there was an apprehension of breach of peace.

18. In the case of **Vishwanath** v. **Nitinchand** (1995 (2) Mh.L.J 664) this Court observed that it is essential for the assumption of jurisdiction by the Magistrate that he should be “satisfied” from a report by a Police Officer or from other information, which would include an application by the party dispossessed that there is likelihood of breach of peace. Where the Magistrate fails to record in his preliminary order the reasons for his satisfaction, or the grounds for his satisfaction the order cannot be sustained and the failure to record a finding by the Magistrate vitiates the proceedings.

19. At the time of the hearing, Mr. Lotlikar, has placed reliance on another Judgment of this Court in the case of **Jayantilal Padamshee Shah** v. **Chandu Khushaldas Udhwani and others** (1986 Cri.L.J. 988) wherein this Court has observed that no preliminary order can be passed unless the Magistrate is satisfied

that a dispute likely to cause breach of peace exists. He is also enjoined with a duty to state the grounds of his being so satisfied. He can arrive at this satisfaction from the report of the Police Officer or upon other information. Even though the police report, which sets out sufficiently substantial reasons for believing that a dispute likely to cause breach of peace exists, can be good foundation for proceeding under Section 145(1) Cr.P.C. The Magistrate is in no way bound to act on all that is stated in the report. Similarly, even if the police report states that no dispute likely to cause breach of peace exists, it is open to the Magistrate to be satisfied otherwise if there is any other material before him to come to that conclusion. He is expected to exercise his own judgment upon the materials placed before him and to arrive at a conclusion whether upon those materials there is likelihood of breach of peace.

20. Reliance has also been placed on the case of **Rajpati** v. **Bachan and another**(AIR 1981 SC 18). In this case, the Apex Court has held that a finding of existence of breach of peace is not necessary at the time when a final order is passed nor is there any provision in the Code requiring such a finding in the final order. Once a preliminary order drawn up by the Magistrate sets out the reasons for holding that a breach of the peace exists, it is not necessary that the breach of peace should continue at every stage of the proceeding unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of sub-section 5 of

Section 145. Unless such a contingency arises the proceedings have to be carried to their logical end culminating in the final order under sub-section 6 of Section 145. The Apex Court further held that it was well settled that under Section 145 it is for the Magistrate to be satisfied regarding the existence of a breach of the peace and once he records his satisfaction in the preliminary order, the High Court in revision cannot go into the sufficiency or otherwise of the materials on the basis of which the satisfaction of the Magistrate is based.

21. Reverting to sub-section 1 of Section 145 of the Code, it may be stated that all that it requires is that the Executive Magistrate should be satisfied from a report of police or other information and he must make an order in writing stating that the grounds of his being so satisfied.

DATED: 7TH OCTOBER,2004.

22. In the case at hand, the learned SDM had not only made a written order but he had also stated the ground of his satisfaction namely that he was satisfied on the basis of the Police Report. All that sub-section 1 of Section 145 of the Code requires is that (a) there should be a dispute relating to possession of land and (b) which is likely to cause a breach of peace and on fulfilment of the said two requirements that the Magistrate gets his jurisdiction to intervene in the said dispute whenever he is “satisfied” that the said essential

requirements exist, for his intervention. This jurisdiction, though very narrow is related to prevention of a breach of peace. It was certainly not required on the part of the Applicant to have made an averment that there was likelihood of there being breach of peace for in that event, the Applicant himself might have invited action against him under Section 107 of the Code. Whether there was likelihood of a breach of peace on account of existence of a dispute concerning land was essentially that of the Police as well as of the Executive Magistrate and in this case, the learned SDM upon perusal of the report submitted to him by the Police had come to the conclusion that there was such a dispute. Certainly, it was not required of the learned SDM to have given a detailed order that there was a dispute which was likely to cause breach of peace. Primarily, it was his subjective satisfaction and that satisfaction could not have been easily interfered with by a Sessions Judge in his/her revisional jurisdiction.

23. In this regard, reference could be made to the case of **R. H. Bhutani** v. **Miss M. J. Desai and others**(AIR 1968 SC 1444). In this case, a Bench of 3 Judges of the Hon'ble Supreme Court held that the satisfaction under sub-section 1 of Section 145 is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is therefore, in his discretion which, no doubt has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his

satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or “from other information” which must include an application by the party dispossessed. The High Court in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

24. In my view, in the case at hand, there was a written order and the ground was also recorded namely that he was satisfied on the basis of the report which he had called from the Police that there was a dispute which was likely to cause breach of peace. Being so, in my opinion, the learned Sessions Judge was not right in interfering with the said preliminary order issued under Section 145(1) of the Code.

25. The next aspect to be examined is whether the filing of the Regular Civil Suit No.57/04/C filed by the Respondent was an impediment for the learned SDM to continue with the proceedings initiated by him by Order of the same date, which had already commenced.

26. Admittedly, Regular Civil Suit No.138/03/A was only in relation to the Power of Attorney which was revoked. In the said Civil Suit, the Respondent also prayed for a restraint against the Applicant from using or interfering with the suit flats occupied by them. In other words, there was no dispute regarding the occupation

of the disputed flat at that time, the said dispute having arisen subsequently. The second suit namely Regular Civil Suit No.45/04/B had again nothing to do with the disputed flat. It is only Regular Civil Suit No.57/04/C filed on 5th May, 2004, had its subject matter the same as the proceedings under Section 145(1) of the Code. This suit was filed on 5th May, 2004, and was fixed for hearing on the next date i.e. 6th May, 2004. The Order under 145(1) was also made on 5th May, 2004 and the proceedings were fixed on 7th May, 2004. On 10th May, 2004, the Applicant gave an undertaking which has been incorporated hereinabove. As already seen, the Applicant in the said undertaking stated that he will not interfere with the suit flat without prejudice to the rights in criminal proceedings before the District Magisrate. In the light of the said undertaking, the learned Civil Judge, Junior Division, felt that no further orders were required to be made in relation to the possession of the Respondents.

27. On behalf of both the parties, reference has been made to several decisions of the Supreme Court as well as of this Court. The decisions relied upon of this Court proceed primarily on the basis of the observations made by the Supreme Court in the case of **Ram Sumer Puri Mahant** v. **State of U.P. and others**(AIR 1985SC 472) on the basis of which the learned Sessions Judge also came to the conclusion that multiplicity of litigation was not in the interest of the parties and that public time should not be allowed to be wasted over meaningless litigation. The learned Sessions Judge also came to the

conclusion that though the Applicant had not filed a suit for recovery of possession he could certainly seek such a relief as well as interim relief in Regular Civil Suit No.57/04/C which was in respect of the same subject matter.

28. In the case of **Ram Sumer Puri Mahant** v. **State of UP. and others** (supra) the Supreme Court noted that in respect of the very property there was a suit for possession and injunction being Title Suit No.87/75 filed in the Court of Civil Judge at Ballia wherein the question of title was gone into and by Judgment dated 28th February, 1981, the suit was dismissed but, apparently an appeal was pending. The Supreme Court observed as follows:-

> "When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145(1) of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for Respondents 2 to 5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim

> orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached".(Emphasis supplied).

29. The Supreme Court, therefore, left it open to either of the parties to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.

30. Th case of **Ram Sumer Puri Mahant** v. **State of U.P. and others**(supra) came to be distinguished in the case of **Jhunamal alias Devandas** v. **State of Madhya Pradesh and others** (AIR 1988 SC 1973). The Supreme Court (a Bench of 3 Judges) observed in this case that the ratio of (Ram Sumer's case) is that a party should not be permitted to litigate before the criminal court when the civil suit is pending in respect of the same subject matter. That does not however mean that a concluded order under S.145, Cr.P.C. made by the Magistrate of competent jurisdiction should be set at naught merely

because the unsuccessful party has approached the civil court. An order made under S.145, Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached.

31. In the case of **Dharam Pal and others** v. **Smt. Ramshri and others**(1993(1) Crimes 304) the Supreme Court stated that when a Civil Court passes an order of injunction or receiver, it is the Civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the Civil Court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute.

32. In the case of **Prakash Chand Sachdeva** v. **State and another**((1994) 1 SCC 471) the Supreme Court stated that " ... a suit or remedy in civil court for possession and injunction based on title normally prevents a person from invoking jurisdiction of the criminal court and as observed by this Court in **Ram Sumer Puri Mahant** v. **State of U.P. and others**(supra) particularly when possession is

being examined by the Civil Court and parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. The normal Rule is as stated by the Court in Ram Sumer Puri Mohant's case. But that was a suit based on title and that could be decided by a Civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 Cr.P.C. Neither the High Court nor the SDM cared to ascertain if the Respondent had any claim to lawfully prevent the Appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquility whereas those under Section 145 relate to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in Puri's case could result in rejecting the application filed under Section 145 of the Cr.P.C. There being no dispute of title between the Appellant and the Respondent the only claim to be

decided was whether the Appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the Appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings".

8TH OCTOBER, 2004.

33. In the case of **Mahant Ram Sarandass** v. **Harish Mohan and another**((2001) 10 SCC 758) the Supreme Court stated that it was not disputed that in the Civil Suit itself the Court had passed interim order of injunction and put certain restrictions on the parties with regard to alienation of the property in question and though the Applicant before the Magistrate was not arrayed as party-defendant in the Civil Suit, the same could not alter the position since the Civil Court being in seisin of the matter, any appropriate relief could be obtained from the Civil Court itself and the Magistrate had no jurisdiction to entertain the application under Section 145 and to pass any orders thereon.

34. In the case of **Ranbir Singh** v. **Dalbir Singh and others** ((2002) 3 SCC 700) there were suits filed by both the owner and the purchaser of the land seeking permanent injunction against each

other and then an order of ad-interim injunction was passed in the suit. One of the parties then filed a petition before the SDM seeking initiation of proceedings under Section 145 Cr.P.C. alleging that immediately after passing of the order of interim injunction, the other party and the supporters had forcibly dispossessed him and as such there was apprehension of breach of peace and it is after about 3 years after filing of the said application before the SDM that the SDM had passed a preliminary order under Section 145(1) Cr.P.C. and also orders under Section 146(1) Cr.P.C, and, in such a situation the High Court came to the conclusion that the proceedings under Section 145 (1) as well as under Section 146(1) were an abuse of process of law and as such quashed the same. In appeal before the Supreme Court, that part of the order of the High Court was maintained.

35. On behalf of the Respondent, reliance was placed on some Judgments of this Court as well, in **Gheverchand Devichand Shah and another** v. **Pukhraj Vaccraj Shah and another**(2000(3) Mah.L.J. 685), **Mohamad Ishasque** v. **Sunil Rupchand Bhatia and others(**1999(3)Mah.L.J. 919) and **Oshiwara Land Development Co.Pvt.Ltd. and others** v. **State of Maharashtra and others(**2000 ALL MR(CRI) 633) which I have perused.

36. As rightly pointed out on behalf of the Applicant, all the cases wherein it was observed that initiation of parallel criminal proceedings under Section 145 of the Code would not be justified,

were cases where before the Executive Magistrate had initiated proceedings under Section 145(1) of the Code, the Civil Courts had passed orders of injunction either at temporary stage or final stage regarding the subject matter of dispute. The Supreme Court, time and again has observed that Courts are not required to place reliance on decisions without discussing as to how the factual situation fits in with the fact situation in which the reliance is placed. In the case at hand, it could be said that the suit by the Respondent and the preliminary order by the SDM under Section 145(1) of the Code were passed simultaneously because the filing of the suit and passing of the order took place on the same day. Although, the Respondent had filed the said Civil Suit to protect his possession, so far the Applicant had not moved the said Civil Court to obtain any temporary relief and the temporary relief granted by the Civil Court was again subject to the outcome of the proceedings under Section 145 of the Code. It is true that the Applicant was free to apply in the said Civil Suit for temporary reliefs. This could be said in every case where proceedings are initiated under Section 145(1) of the Code that the party could always go to the Civil Court and obtain appropriate reliefs.

37. As stated by the Supreme Court in the case of **Rajpati** v. **Bachan and another** (AIR 1981 SC 18) there is no necessity that the apprehension of existence of breach of peace should continue at all times until the final order is made. It has been submitted on behalf of the Applicant that the Respondent has filed the said Civil Suit only

to protect his acts of trespass and being so as things stand the Applicant is unlikely to get any relief in the said Civil Suit. In my view, as long as the Civil Court had not passed any orders of temporary injunction in the said Civil Suit, the filing of the Civil Suit was not sufficient to preclude the learned SDM to continue with the proceedings under Section 145 of the Code. In my view, the action of dropping the proceedings by the learned Sessions Judge in such a situation was rather premature and, therefore, deserves to be set aside. The learned Sessions Judge, by dropping the proceedings has left both the parties free to commit breach of peace regarding the possession of the disputed flat. It must be observed that unless the Civil Court passes some orders regarding the subject matter of the dispute the proceedings initiated under Section 145 were bound to be completed to its logical conclusion. Both the parties or any of them would be at liberty to approach the learned SDM to drop the proceedings as and when the Civil Court passes an Order regarding the interim possession of the disputed flat.

38. As a result of the above discussion, the revision application is hereby allowed. Consequently, the impugned Order of the learned Sessions Judge, dated 21st August, 2004, is hereby set aside and the parties are hereby directed to appear before the learned SDM on 29th instant at 2.30 p.m. for further proceedings in the case. As already stated, in case, the Civil Court passes any Order of temporary injunction or the suit itself is disposed off, either of the

parties will be at liberty to apply to the learned SDM to drop the proceedings and the learned SDM would consider the request made by such parties or any of them in accordance with law. The learned SDM is hereby directed to terminate the proceedings as expeditiously as possible.

N. A. BRITTO, J.

RD.